

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition for Declaratory Ruling to Clarify
Provisions of Section 332(c)(7)(B) to Ensure
Timely Siting Review and to Preempt under
Section 253 State and Local Ordinances that
Classify All Wireless Siting Proposals as
Requiring a Variance

)
)
) WT Docket No. 08-165

**COMMENTS OF VILLAGE OF HOFFMAN ESTATES, ILLINOIS, IN
SUPPORT OF NATOA ET AL PETITION FOR RECONSIDERATION**

The Village of Hoffman Estates, Illinois submits these comments in support of the Petition for Reconsideration or Clarification filed by the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association.¹

I. BACKGROUND

The Petition asserted that the Federal Communications Commission ("Commission") should reconsider, or at a minimum clarify, the 30 day deadline imposed on local authorities to review an application for completeness or waive their ability to "toll" the 90 day or 150 day deadlines established by the Order to take final action on a wireless facilities siting application.² The Petition cites both legal and practical problems that require reconsideration of the 30 day deadline.

¹ In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Reconsideration or Clarification*, WT Docket No. 08-165, filed Dec. 17, 2009 (Petition).

² In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Declaratory Ruling*, WT Docket No. 08-165, FCC 09-99 (Nov. 18, 2009) ("Order").

The Village of Hoffman Estates fully supports and agrees with the Petition's legal analysis and believes that the Commission exceeded even its own interpretation of its authority under Section 332(c)(7). We believe that this internal 30-day deadline is a new limitation placed on local zoning authorities by the Commission and not simply an interpretation of Section 332(c)(7). As such we fully adopt the Petition's legal arguments against the 30 day deadline.

We submit these comments separately to provide the Commission with examples of how the 30-day deadline will impact local governments, such as the Village of Hoffman Estates, in practice.

II. EXAMPLES OF PRACTICAL PROBLEMS WITH 30 DAY INCOMPLETENESS DEADLINE

The Village of Hoffman Estates strives to provide expedient and high quality service to all residents and businesses filing any application for any planning or zoning matter within the Village. All applications are reviewed on a first come, first serve basis. Applications may be filed by residents, religious organizations, non-profit organizations, governmental entities, or private developers. Giving preferential treatment to any one class, such as a communication antenna, would be inappropriate, and in the cases where an antenna request is given preference over a religious institution request, it may also violate Federal law.

The review process for most commercial zoning applications is an iterative process, where the initial application submittal is typically incomplete and it may require two or more submittal/review cycles before all necessary information is complete. Each review cycle typically requires two to three weeks for review, however this time period is not guaranteed and depends on workloads and staffing levels at the time an application is made. The Village does not have financial resources available to significantly increase staffing in order to provide a dedicated staff person to accommodate the special interests of the cellular industry. The new 30-day regulation imposed by the FCC would in effect restrict the Village's ability to properly apply its zoning authority by forcing an application to be processed through a public hearing without regard to content or completeness. The new FCC rules require no accountability on the part of the applicant to act in a complete or timely manner. In effect, an applicant who fails to produce proper documentation following the initial Village review cycle is given authority by the FCC to proceed to a public hearing on equal grounds as applicants who were to thoroughly provide all submittal documents. This would put the appointed and elected officials in a position to make decisions based on incomplete or erroneous information.

The new FCC limitations fail to recognize the fact that most application submittals require multiple review and submittal cycles before all information is complete enough for a public hearing to be scheduled.

In most cases because the initial information is incomplete, the Village is not able to identify all issues until after the second or third submittal is provided. For example, in a recent cellular antenna request, the applicant proposed to locate antennas on top of an apartment building in a residential area. In addition to the application missing significant information, the accompanying plans did not include any information regarding screening, camouflaging, mounting details, or elevation drawings from all sides of the buildings. The Village identified these concerns in a review letter to the applicant. The second submittal was made with entirely new plans for an extension of the building walls above the roofline to provide a backdrop to camouflage the antennas. These drawings were lacking any dimensional information, structural information, building materials, and other basic information needed for review. The plans refer to design information to be done "by others". Even with a prompt second review by the Village, 30 days had passed since the original submittal was made. Under the new regulations, the Village would be forced to either hold a zoning hearing based on incomplete and vague information or to deny the application based on incomplete information and require the applicant to start from the beginning.

Zoning applications are typically submitted lacking basic information; such as a property Owner Consent Form, Court Reporter Form, Economic Disclosure Statement, or a statement addressing the Zoning Standards, even though all of these forms are clearly included in the application packet and submittal instructions. Many applications are submitted with basic fill-in-the-blank items such as addresses, property owner information, or other information incorrect complete or left blank. These errors and omissions lead to delays as Village staff contacts the applicant and waits for corrections or documents to be submitted.

Required plans and other materials are often incomplete or missing the applicant fees or the application completely omitted. Many proposals are made without any provisions for screening or camouflaging of the antennas or other equipment. In some cases, after a period of weeks passes to receive the revised plans, the resubmittal is still inadequate, requiring another period of time to request further technical revisions.

The applications for cellular antenna installations are always submitted to the Village by consultants, or even sub-consultants and not the actual cellular company. In many cases, the person making the application has no means to directly contact the cellular company's engineer or other expert to address specific submittal requirements. This means that the Village is *never* in direct communication with the cellular provider company, which is problematic when a technical or specific detailed question arises. Because the primary contact for the application is an intermediary and typically has very little knowledge regarding the content of the submittal, there is often important information missing from the application. In some cases there is a separate company that represents the property owner in the lease to the cellular company. The cellular provider's consultant is then not in direct communication with the actual property owner. Any plan revisions or documents that must be completed often must be transmitted through a chain of middlemen, which causes delays.

In the past the Village of Hoffman Estates has been very flexible in allowing applicants to make partial submittals and has allowed applications to remain in a "pending" status for lengthy time periods (sometimes months) while the applicant continued to gather additional required information. The applicants were not penalized for the additional Village staff time required to manage and coordinate these partial submittals. Often Village staff has acted as a secondary project manager on behalf of the applicant because the Village becomes a "repository" for the various documents and plans as they are submitted. This approach has provided a great convenience for the consultants that represent cellular providers in these applications because they are often are not detail-oriented, timely, or diligent in making certain their submittals are complete. Because the application process often involves the "trickling-in" of materials, it is common for an application to remain in a "pending" status for several months while the petitioner collects and submits information. The effect of the new mandatory "shot clock" regulation implemented by the FCC will be that the Village will no longer accept partial submittals from cellular antenna applicants. With the mandatory time limit taking effect upon the initial submittal, the Village will be forced to implement strict application requirements and will not allow an application to be "pending" if it is not complete. If a partial submittal is made, the applicant will be notified that their submittal is incomplete and it will be denied unless it is corrected to a 100% complete level within the first 30 days. After 30 days has elapsed, any incomplete application will be denied and the applicant will be required to resubmit all

application materials in order to proceed. The resubmitted application cannot be considered as an extension of the initial submittal under the FCC regulation and therefore it will be considered new, regarding payment of fees and the order of scheduling will be based on the new submittal date.

The FCC declaratory ruling fails to acknowledge that cellular providers often do not submit complete information and no accountability is required for their actions or lack of action. In a specific recent example, an application submittal failed to include a signed consent form from the subject property owner authorizing the cellular company to appear before the Village with a zoning request for the subject property. Staff informed the applicant that the missing consent form would prevent the Village from scheduling the public hearing. In an effort to move the process along, the applicant provided a signed consent form that included a signed name of a property owner representative. A public hearing date was scheduled and the applicant was instructed to post the required notification sign on the subject property. The next day, the owner representative whose name appeared on the signed consent form, contacted the Village to question why a notice sign was posted on their property and indicated that they had not signed the form and the cellular company did not have a signed lease authorizing the installation of an antenna on the subject property. When questioned, the applicant acknowledged they did not have an agreement to locate on the subject property and could not explain why the owner representative's name had been signed by someone else. The Village ultimately cancelled the hearing after incurring a significant amount of staff time and other costs. A proper application has never been re-filed for this site.

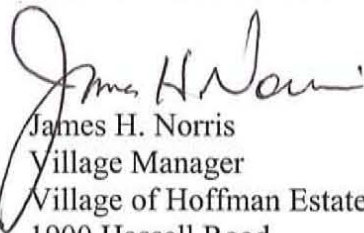
The Village of Hoffman Estates receives several applications for cellular or microwave dish antennas each year. Antennas have been installed at more than three dozen sites throughout the Village; on office buildings, apartment buildings, athletic field light poles, and on all of the six Village water towers. To date, only two proposed installations have been denied due to very specific concerns involved in each situation. The other dozens of antennas have been processed smoothly without complaint from applicants that the process is unfair or too lengthy. The new FCC regulations will significantly alter the current process and will have the potential effect of creating a more formalized bureaucratic and lengthy process for the processing of cellular applications.

In the past, the Village has maintained a cooperative relationship with cellular applicants. The implementation of a more strict application process and the likelihood that applications will need to be formally denied before ever reaching a public hearing due to incomplete information may cause friction for cellular applicants and increase the potential for litigation. Any legal defense will require the Village to incur significant costs. This would be very detrimental to the Village given budget constraints that are not expected to improve for several years. This new FCC mandate may result in a greater financial burden being placed on taxpayers without materially improving any process. There has also been no problem or need for change identified in the Village with regards to the processing of cellular antenna requests. If specific instances exist around the country where a process has not been completed fairly, the FCC should address those cases independently rather than imposing penalties and expensive mandates upon all communities.

III. CONCLUSION

In conclusion, we support the Petition and urge the Commission to reconsider or clarify the Order as to the 30 day review for incompleteness deadline.

Respectfully submitted,



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